

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**IN RE: REALPAGE, INC., RENTAL  
SOFTWARE ANTITRUST LITIGATION  
(NO. II)**

**Case No. 3:23-MD-3071  
MDL No. 3071**

**This Document Relates to:  
3:23-cv-00330 (M.D. Tenn.)  
3:23-cv-00333 (M.D. Tenn.)  
3:23-cv-00337 (M.D. Tenn.)  
3:23-cv-00339 (M.D. Tenn.)  
3:23-cv-00387 (M.D. Tenn.)  
3:23-cv-00389 (M.D. Tenn.)  
3:23-cv-00414 (M.D. Tenn.)**

**Chief Judge Waverly D. Crenshaw, Jr.**

**REPLY IN SUPPORT OF BH MANAGEMENT SERVICES, LLC'S  
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Plaintiffs named BH Management Services, LLC (“BH”) as a Defendant in seven actions filed in the Western District of Washington (the “Washington Actions”). BH does not have any meaningful contacts with the State of Washington, much less contacts that would permit a court in that State to exercise personal jurisdiction over BH. On June 21, 2023, Defendants notified the Court that BH intended to seek dismissal from these actions for lack of personal jurisdiction. Dkt. 297 at 6. One week later, BH conferred with Plaintiffs about the legal and factual basis for its motion. Plaintiffs indicated that they were confident in their position and declined to take any steps to remedy the jurisdictional deficiency. After BH filed its motion (Dkts. 326, 329), Plaintiffs informed the Court that they would oppose it (Dkt. 355 § IV).

Plaintiffs apparently had a change of heart. Their “opposition” to BH’s motion to dismiss for lack of personal jurisdiction does not respond to any of BH’s arguments. Dkt. 389. Plaintiffs

do not even dispute that the transferor court in the Washington Actions lacks jurisdiction over BH. *Id.* Because Plaintiffs declined to respond to BH’s jurisdictional arguments, they have waived any potential arguments they might have raised. *See Doe I v. Cleveland Metro. Sch. Dist. Bd. of Educ.*, 533 F. Supp. 3d 567, 575 (N.D. Ohio 2021) (“By failing to respond to defendant’s arguments, plaintiff has waived his opposition to dismissal of the claim.”) (cleaned up).

Plaintiffs instead argue that this Court should deny BH’s motion as “moot” because they filed a new complaint in the Middle District of Tennessee naming BH as a Defendant,<sup>1</sup> and once that complaint is “administratively transferred to this Court and added to the MDL docket,” they “intend to dismiss” BH from the Washington Actions. Dkt. 389 at 2.<sup>2</sup> But so long as the Washington Actions are live and BH is named as a Defendant in any of them, BH’s motion is not moot. *See In re Amtrak “Sunset Limited” Train Crash in Bayou Canot, Ala., on Sept. 22, 1993*, 923 F. Supp. 1524, 1530 & n.9 (S.D. Ala. 1996) (rejecting argument that “the filing of a new lawsuit” in the MDL court “moot[ed]” a defendant’s motion to dismiss a transferred action for lack of personal jurisdiction in the transferor district; granting motion to dismiss).

Plaintiffs could have “mooted” the present controversy by dismissing BH from the Washington Actions weeks ago. They did not do so and still have not done so. There is no need to continue waiting on Plaintiffs to do the right thing. The Court should grant BH’s motion and dismiss BH from the Washington Actions for lack of personal jurisdiction.

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<sup>1</sup> *See* Compl., *Kabisch v. RealPage, Inc.*, No. 3:23-cv-00742 (M.D. Tenn. July 24, 2023).

<sup>2</sup> BH reserves all rights and defenses as to the *Kabisch* action. It will respond to that complaint in due course, pursuant to the Federal Rules, the Local Rules, and this Court’s orders.

Dated: July 31, 2023

Respectfully submitted,

/s/ Ian Simmons

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### **CERTIFICATE OF SERVICE**

I hereby certify that on July 31, 2023, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record registered on the CM/ECF system.

DATED: July 31, 2023

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